

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MAYNARD ORVILLE OVERTON,

Plaintiff,

v.

ATTORNEY GENERAL OF VIRGINIA,
Defendant.

Civil Action No. 7:08-cv-00447

MEMORANDUM OPINION

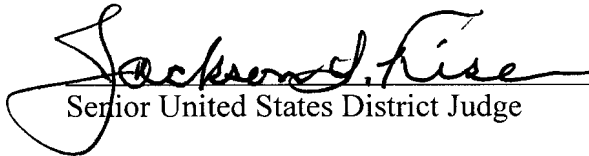
By: Hon. Jackson L. Kiser
Senior United States District Judge

Petitioner, Maynard Orville Overton, a Virginia inmate proceeding pro se, filed this civil rights complaint, pursuant to 42 U.S.C. § 1983. In his complaint, Overton argues that the Commonwealth's Attorney breached his plea agreement. As relief, Overton asks that his plea agreement "be honored" and his sentence be vacated. After reviewing the complaint, I find that Overton's claim and the relief he seeks is more appropriately addressed in a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Therefore, the court will construe Overton's pleading as a § 2254 petition. However, court records indicate that petitioner has previously filed other § 2254 petitions concerning the same convictions and raising the same claim. See Overton v. Johnson, Civil Action No. 7:07-cv-00176 (W.D. Va. July 17, 2007) (dismissing his claims as untimely); 7:08cv00285 (dismissing his petition as successive). Thus, petitioner's current petition is a subsequent one, falling under the successive petition provisions of the federal habeas statutes in 28 U.S.C. § 2244(b). Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. Because petitioner has not submitted any evidence that he has obtained such certification by the United States Court of Appeals

for the Fourth Circuit, I will dismiss the petition without prejudice as successive.*

The Clerk is directed to send a copy of this Memorandum Opinion and the accompanying Order to petitioner.

ENTER: This 8th day of August, 2008.


Senior United States District Judge

* A form and instructions for filing a request for certification to file a subsequent petition are available from the United States Court of Appeals for the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.